SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 13

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	)	Case No. 1:07CV02103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	)	Case No. 07CV3582

DEPOSITION OF MICHELE GANELESS
NEW YORK, NEW YORK
MONDAY, NOVEMBER 3, 2008

Novemeber 3, 2008

9:49 a.m.

VIDEOTAPED DEPOSITION OF MICHELE GANELESS, held at the offices of Wilson Sonsini Goodrich & Rosati, LLP, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

A P P E A R A N C E S

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

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ALSO PRESENT:
SALLIAN BROWN, Videographer
MICHELENA HALLIE, MTV Networks

M. GANELESS

A. Again, I don't really understand the specifics of the joint venture.

Q. What about before the joint
03:12:32 venture was created, is it the case that a Viacom-owned entity owned the rights to distribute South Park content online, prior to the creation of the joint venture, to your knowledge?

03:12:47 MS. KOHLMANN: I object to the question, to the extent, if I'm understanding it correctly, you are suggesting that she testified one way or the other what happened after the
03:12:57 joint venture was formed.

But you can answer.

A. To the best of my understanding, a Viacom or Comedy Central entity owned the rights to South Park, the TV show, and
03:13:09 how it was distributed on all platforms.

Q. And that's prior to the creation of the joint venture, right?

A. That is my understanding. But you'd have to check with the lawyers.

03:13:22 Q. Which lawyer would know?

M. GANELESS

A. Joella West.

Q. To the best of your knowledge, Ms. Ganeless, have Viacom senior executives made any public statement with respect to a correlation between the traffic to Viacom's online sites and the removal of content from YouTube in the February 2007 take-down notice we talked about?

MS. KOHLMANN: I'm sorry, can you just read that back one more time?

(Record read.)

A. Yes. I believe they have. I can't remember specifically when or where, but I remember comments being made.

Q. Aren't you aware that Messrs. Dooley and Dauman made statements concerning the correlation between the traffic to Viacom's online sites and the removal of content from YouTube in the February 2007 take-down notice, in connection with a March 1st, 2007 earnings call for Viacom?

MS. KOHLMANN: Objection.

M. GANELESS

You can answer.

A. I remember them making comments in the press. I can't remember where, but it's very likely it was the earnings call.

Q. As you sit here today, do you have any recollection of what those statements were, correlating traffic to the online sites owned by Viacom and the removal of content from YouTube?

A. I remember there were increases. I can't remember what the numbers were.

Q. You remember that they reported that there were increases, right?

A. I remember that the Philippe and Tom reported traffic increases, yes.

Q. You remember that they reported substantial traffic increases to Viacom's online sites, following the removal of content from YouTube in February 2007, right?

MS. KOHLMANN: Objection as to form.

You can answer.

A. I don't remember the specific

numbers, but I do remember them reporting increases in traffic. But I'd have to look at the reports to remember the
03:15:52 numbers.

Q. I'm not asking you the specific numbers yet. I'm asking you whether you recall that they reported substantial increases in traffic to Viacom's online
03:16:01 sites, following the take-down of content from YouTube in February 2007.

MS. KOHLMANN: Objection as to form.

You can answer.

03:16:10 A. I can't remember how big the gains were, but I do remember gains.

Q. You remember that they reported figures that you believed were inflated, right?

03:16:20 MS. KOHLMANN: Objection.

A. It's possible. I don't remember.

Q. You really have no recollection of whether you believed that Mr. Dooley
03:16:30 overstated the increase in traffic to

M. GANELESS

Viacom's online sites, following the February 2007 take-down?

MS. KOHLMANN: Objection as to form.

03:16:37

A. I don't remember.

MR. KRAMER: Let's go with that as 18.

(Ganeless Exhibit 18, March 1, 2007 e-mail thread, bearing Bates numbers VIA00183316 to 17, marked for identification, as of this date.)

03:18:57

MR. KRAMER: Before we get there, hang onto that for one second.

03:17:12

Q. Do you recall communicating, Ms. Ganeless, with anyone about the accuracy of statements made by Mr. Dooley and Mr. Dauman on the earnings call about the increase in traffic to Viacom's online sites, following the February 2007 take-down to YouTube?

03:17:27

MS. KOHLMANN: Objection as to form.

03:17:35

You can answer.

M. GANELESS

A. I am trying to remember that, but I do not remember right now.

Q. Okay. Let's go with Exhibit 18.

03:17:55 MS. KOHLMANN: Do you have other copies of that?

MR. KRAMER: Did I not give it to you?

MS. KOHLMANN: Thanks.

03:18:03 Q. Ms. Ganeless, if Mr. Dooley or Mr. Dauman made a misrepresentation of fact on an earnings call, that would have been a big deal, wouldn't it?

MS. KOHLMANN: Objection.

03:18:25 A. I'm sorry, I'm just reading. Can you restate the question.

Q. Yeah. If Mr. Dooley or Mr. Dauman made a misrepresentation of fact on an earnings call, could that have

03:18:42 been a big deal to you?

MS. KOHLMANN: Objection.

You can answer.

A. Yes.

Q. Especially if that

03:18:46 misrepresentation of fact concerned Comedy

Central, correct?

A. Yes.

Q. So in Exhibit 18, Mr. Cucci --

03:18:56 sorry, Exhibit 18 is an e-mail thread produced to us by Viacom, dated March 1st, 2007. It bears Bates number VIA00183316 to 17, and it starts with an e-mail message from Mr. Cucci to you,

03:19:15 Ms. Ganeless, and Erik Flanagan at 9:32 a.m. on March 1, in which he states, "On the earnings call Dooley mentioned Comedy traffic is up 90 percent since YouTube take-down."

03:19:26 Does that refresh your recollection about a statement that a Viacom senior executive made about the correlation between the traffic to Viacom's online Comedy site and the

03:19:36 removal of content from YouTube in February 2007?

A. I remember this now.

Q. Okay. You remember that Mr. Dooley stated, on an earnings call,

03:19:46 that Comedy traffic was up 90 percent

since the YouTube take-down on March 1st, 2007?

MS. KOHLMANN: Objection.

03:19:55 You can answer.

A. What I actually remember is that after all of this, we -- it was clarified that the 90 percent was -- that John had heard it wrong, I believe; although again

03:20:11 my memory is sketchy. But that that 90 percent referred to year-over-year gains, not -- that's why the number didn't look familiar to me, I think.

Q. You don't recall Mr. Dooley

03:20:24 actually saying that Comedy traffic was up 90 percent since the YouTube take-down on March 1st, 2007?

A. I didn't listen to the earnings call, so I was -- I was investigating,

03:20:38 after John Cucci sent me this e-mail. And I remember, the piece I remember is that after we did all of the investigating that, the 90 percent referred to a year-over-year gain.

03:20:53 Q. So if Mr. Dooley had said that

it was up 90 percent since February 2000 -- sorry. If Mr. Dooley had said on the earnings call that traffic to Viacom's
03:21:05 Comedy sites was up 90 percent from February 2007 to March 2007, that would have been a misrepresentation, correct?

MS. KOHLMANN: Objection.

A. Based on the data here, yes,
03:21:28 that would have been a misrepresentation.

Q. And in fact, when you heard that Mr. Dooley had said that Comedy traffic was up 90 percent since the YouTube take-down on March 1st, 2007, you
03:21:39 recognized right away that that number didn't jibe with any of your internal data, right?

MS. KOHLMANN: Objection as to form.

03:21:46 You can answer.

A. Yes, I believe I said here in the e-mail that number doesn't jibe with any of our internal data.

MR. KRAMER: Let's have this one
03:22:01 marked as 19, please.

M. GANELESS

(Ganeless Exhibit 19, final transcript of Viacom's Q4 2006 earnings conference call on March 1, 2007, marked for identification, as of this date.)

THE WITNESS: Thank you.

Q. Ms. Ganeless, I'm not going to ask you to read the whole thing.

Exhibit 19 is the final transcript of Viacom's Q4 2006 earnings conference call on March 1, 2007 starting at 8:30 eastern time. And I'd ask you to turn to page 15 at the bottom, where a stock analyst named Imran Khan from JP Morgan is asking Viacom the following question: "Secondly, you said your traffic growth was significant, after you asked YouTube to take out your content. I was wondering if you can quantify what kind of video download you are seeing. Thank you."

Did I read that correctly?

A. I'm sorry, I wasn't following along specifically.

M. GANELESS

Q. At the bottom of page 15, Imran Khan, an analyst with JP Morgan has some questions during the earnings call. And
03:23:15 he says, "Secondly, you said that your traffic growth was significant after you asked Google to take out your content. I was wondering if you can quantify what kind of video download you are seeing.
03:23:29 Thank you."

Do you see that?

A. Yes, I do.

Q. Then, if you turn to page 16 of the March 1st, 2007 transcript, do you see
03:23:38 where Tom Dooley, Viacom's chief financial and administrative officer states, "In terms of the kind of growth that we have experienced on our online sites, Comedy is up over 90 percent, Nickelodeon is up in
03:23:54 the 30s, and MTV.com was up in the mid-50 percentage growth, as a result -- in the period after we did the take-down."

Do you see that?

A. I do.

03:24:07 Q. Do you recall discussing, via

e-mail or otherwise, Mr. Dooley's statement that I just read?

A. I remember it from the e-mail you just showed me.

Q. Do you recall whether you believed Mr. Dooley's statement to be accurate, the first time you heard it?

A. As I just said from the other e-mail, I did not believe it to be accurate, because it didn't jibe with any of the numbers that had I seen.

Q. Now, you said that you believed that Mr. Dooley had been referring to year-over-year growth, when he said that Comedy was up over 90 percent. But if you read the transcript, that's not what he was saying, right?

A. What I believe I testified to was that I remembered, at the end of our investigating, that 90 percent was referring to year-over-year growth. I had not seen a transcript of the earnings report, so I didn't know if he had said it correctly or not.

M. GANELESS

Q. Well, Mr. Cucci told you that Mr. Dooley said that traffic on Viacom's Comedy sites was up 90 percent since the
03:25:09 YouTube take-down. And he said that on March 1st, 2007, right?

A. Yes.

Q. So Mr. Cucci accurately reported Mr. Dooley's statements on the earnings
03:25:19 call?

MS. KOHLMANN: I'm going to object, if you are suggesting that --

MR. KRAMER: Counsel, no speaking objections.

03:25:23 MS. KOHLMANN: I am going to --

MR. KRAMER: No speaking objections here counsel. That is improper.

MS. KOHLMANN: Do you want the
03:25:28 record to be inappropriate?

I'm not coaching the witness.

MR. KRAMER: Just object, just object. Do not make a speaking objection at this point in the
03:25:36 deposition.

M. GANELESS

MS. KOHLMANN: I'm entitled to object and state that you are mischaracterizing what the statement on page 15 says.

03:25:40

MR. KRAMER: That's coaching the witness.

MS. KOHLMANN: It is not coaching the witness.

03:25:45

MR. KRAMER: Do not make speaking objections.

MS. KOHLMANN: It is not coaching the witness.

Q. Mr. Dooley said that traffic was up over 90 percent, after the YouTube take-down on Viacom's Comedy sites, right?

03:26:05

MS. KOHLMANN: Objection.

A. In the earnings report that you just showed me, Mr. Dooley said, "Comedy is up over 90 percent, Nickelodeon is up in the 30s, MTV.com was up in the mid-50 percentage growth as a result -- in the period after we did the take-down."

03:26:22

Q. Right. So Mr. Dooley was telling analysts on the earnings call that

03:26:37

Viacom's Comedy traffic increased 90 percent since the YouTube take-down, right?

03:26:46 MS. KOHLMANN: Objection.

A. Based on what it says here, it looks like he is saying Comedy traffic is up 90 percent, since -- in the period after we did the take-down.

03:27:11 Q. And that's how Mr. Cucci reports it to you in his e-mail, which we looked at as Exhibit 18, right?

A. That is correct.

Q. Okay. And you knew that that

03:27:21 was inaccurate at the time you heard it, correct?

A. I knew that I had not seen that number before.

Q. You knew that the notion that

03:27:30 traffic was up 90 percent since the YouTube take-down did not jibe with any of your internal data, right?

MS. KOHLMANN: Objection.

A. Yes, I knew -- I said in this

03:27:41 e-mail, the number doesn't jibe with any

of our internal data.

Q. You knew Mr. Dooley's statement was false --

03:27:46 MS. KOHLMANN: Objection.

Q. -- right?

MS. KOHLMANN: Objection.

A. I knew that that 90 percent did not refer to the number after the YouTube

03:27:57 take -- the time period after the YouTube take-down. I found out that it referred to an increase from a year ago.

Q. So you knew that Mr. Dooley, at the time he made the statements on the

03:28:10 earnings call, had made a misrepresentation of fact about the growth in traffic on Comedy Central since the YouTube take-down, right?

MS. KOHLMANN: Objection.

03:28:17 You can answer.

A. I don't know if he was misrepresenting it or if he didn't understand it. I have no way of knowing what he -- why he said that.

03:28:30 Q. So he could have been lying?

M. GANELESS

MS. KOHLMANN: Objection.

A. I have no reason to believe he was lying.

03:28:35 Q. Didn't you later tell Mr. Flanagan you didn't see how Mr. Dooley's statement could be accurate on any metric?

A. It is possible I said that. I still don't know what Tom Dooley was basing his comments on.

Q. It's possible that you said that, or you did say that?

A. I don't remember exact conversations from that time, but that sounds like something I likely said.

Q. Because you know it's not accurate, Mr. Dooley's statement, on any metric?

03:29:05 A. I remember there being a lengthy investigation about what the 90 percent was and that that 90 percent metric did not jibe with our internal data.

Q. Did you inform any -- well, 03:29:17 let's talk about that investigation.

M. GANELESS

Who was involved in that investigation?

A. I believe it was our research group. From this e-mail, it was certainly our research group. That's who I remember looking into it.

Q. Did you inform any Viacom board members that Mr. Dooley's statement on the earnings call was untrue?

MS. KOHLMANN: Objection. Misstates the record.

A. I had no conversations with Viacom board members.

Q. So no, you didn't tell anyone that you thought Mr. Dooley's statement was false?

A. Again, having not seen -- having not listened to or seen the transcript, I only had John Cucci's recollection of what he said to base it on, so I didn't know if what John said about what Dooley said was accurate. I merely looked into that 90 percent number, based on John's question.

Q. And after you recognized that

the number didn't jibe with any of your internal, data did you take any action to have Mr. Dooley's statement to analysts
03:30:28 corrected?

MS. KOHLMANN: Objection, misstates the record.

A. I didn't know exactly what Mr. Dooley said to the analysts. I only
03:30:34 had John Cucci's recollection.

Q. Did you have any reason to doubt Mr. Cucci's recollection?

A. Specific data references, in earnings calls he makes specific data
03:30:51 references to lots and lots of different data. I had no idea whether or not -- and until you showed me this just now, I had no idea whether it was said correctly in the earnings call or not said correctly.
03:31:02 I just knew exactly what that 90 percent meant.

Q. Who is Mr. Cucci?

A. Cucci is the COO of the MTV Entertainment group.

03:31:09 Q. So if the COO is reporting to

you that Mr. Dooley has just said that traffic to Comedy sites is up 90 percent since the YouTube take-down, wouldn't you
03:31:19 take that seriously?

MS. KOHLMANN: Objection.

A. I take it seriously. I looked into what that 90 percent referred to, and I got back to Mr. Cucci.

03:31:29 Q. And when Mr. Cucci reported it to you, did you have any reason to doubt that Mr. Cucci had reported accurately what Mr. Dooley had said on the phone, on the earnings call?

03:31:40 A. I remember having a conversation with John Cucci, saying he must have been referring to something else, because that doesn't jibe with our internals. I have a vague recollection of John saying he was
03:31:51 going to check.

I don't know how that all ended up, other than the 90 percent number referring to year over year. I don't know if John misheard on the earnings call. I
03:32:07 never checked back to see the transcript

of the earnings call. All I did was check to see what that 90 percent meant.

Q. Didn't you care about the fact

03:32:17 that a Viacom senior official might have been making -- didn't you care that a Viacom senior official was making a misrepresentation on the earnings call to stock analysts?

03:32:26 MS. KOHLMANN: Objection, misstates the record.

A. I assumed that John Cucci misheard what Dooley said.

Q. Why did you assume that

03:32:35 Mr. Cucci would mishear something that he reported to you and asked you to investigate?

MS. KOHLMANN: Objection.

A. I can't remember exactly why.

03:32:50 But I assumed John was listening to that earnings call in the course of the day; and when he heard that, it didn't jibe, and so we looked into exactly why -- what that 90 percent was referring to.

03:33:02 I don't know if John followed up

with, with any of the board members.

Q. Did you follow up with any of the board members about the statement that

03:33:11 you believed Mr. Dooley had made on the earnings call?

MS. KOHLMANN: Objection.

A. I didn't know exactly what Mr. Dooley said on the earnings call. I

03:33:17 only had John Cucci's recollection.

Q. So based on John Cucci's recollection, you knew -- sorry.

Based on what John Cucci reported to you, you believed there was a

03:33:27 misrepresentation that was made on the Viacom's earnings call by Mr. Dooley, right?

MS. KOHLMANN: Objection. Misstates the record.

03:33:33 A. I did not say that. I said I believed that he must have -- that Tom Dooley must have been referring to a different metric, when he said 90 percent.

Now that you have shown me the

03:33:49 record, I know that to be false.

M. GANELESS

Q. Do you -- go ahead.

A. I didn't look at the transcript.

Q. Why not?

03:33:57 A. Not enough time in the day.

Q. Not enough time in the day to address the fact that a Viacom senior official may have been misrepresenting a fact, in response to an analyst's question

03:34:07 on an earnings call?

MS. KOHLMANN: Objection.

A. No.

Q. Don't you think that should be a priority?

03:34:13 MS. KOHLMANN: Objection.

A. In my day-to-day, the priority is getting the best shows up on the air and the many people as possible to watch them.

03:34:21 Q. Well, you had enough time to exchange a number of e-mails about that representation by Mr. Dooley that day, right?

A. I absolutely had time to make a

03:34:33 number of e-mail exchanges.

M. GANELESS

I assumed the transcript of the earnings call would be quite long and so -- not in the habit of getting a
03:34:41 transcript of earnings calls.

Q. So if all the information you had was Mr. Cucci's representation about what Mr. Dooley had said, and you knew that number didn't jibe with any of your
03:34:59 internal data, what did you do to ensure that there was a correction?

MS. KOHLMANN: Other than what she's already testified to.

MR. KRAMER: Which is nothing.

03:35:11 MS. KOHLMANN: No, that misstates the record.

A. What I did was let John Cucci know and Colleen Fahey-Rush, who is the vice president of research for MTV
03:35:22 Networks. I let them know that that number didn't jibe with any numbers that I had. I asked them to investigate it.

We discovered that that 90 percent represented a year-over-year
03:35:35 growth, and that was the end of my

involvement in it.

Q. You're sure?

A. That's my recollection.

03:35:43 Q. You responded to Mr. Cucci as if his report was accurate, right?

MS. KOHLMANN: Objection.

A. I don't remember how I responded to Mr. Cucci. I just forwarded it on to

03:35:56 the research group to say, can you find out how that number was compiled.

MR. KRAMER: Let's have this one marked as 23.

(Ganeless Exhibit 20, e-mail

03:37:32 thread, bearing Bates number VIA00225061, marked for identification, as of this date.)

MR. KRAMER: I'm sorry, what number are we up to? 20.

03:37:09 THE WITNESS: Thank you.

Q. Ms. Ganeless, Exhibit 20 starts with the same message from Mr. Cucci, and your message follows. Then there's some back and forth between you and others at

03:37:22 Viacom concerning the original message

from Mr. Cucci. It's a document produced to us by Viacom, bearing Bates number VIA00225061.

03:37:38 Do you see on March 1, 2007, at 10:04 a.m., you say to Mr. Flanagan, "We will probably never know, but I don't see how that can be accurate on any metric." Right?

03:37:51 A. Yes.

Q. What you were saying is you don't see how Mr. Dooley could report accurately that traffic is up 90 percent since the YouTube take-down on Viacom's

03:38:03 Comedy sites?

MS. KOHLMANN: Objection.

A. What I was saying is that 90 percent didn't reflect any of the data that I had. I later found out it

03:38:14 reflected a year-over-year growth.

Q. But Mr. Dooley wasn't talking about year-over-year growth, and no one was talking about year-over-year growth here. What we were talking -- what

03:38:25 Mr. Dooley was talking about, and what